

CITY OF OREM  
CITY COUNCIL MEETING  
56 North State Street Orem, Utah  
June 17, 2014

**3:00 P.M. WORK SESSION – PUBLIC SAFETY TRAINING ROOM**

|                   |   |
|-------------------|---|
| CONDUCTING        | Mayor Richard F. Brunst, Jr.  |
| ELECTED OFFICIALS | Councilmembers Hans Andersen, Margaret Black, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner   |
| APPOINTED STAFF   | Jamie Davidson, City Manager; Brenn Bybee, Assistant City Manager; Richard Manning, Administrative Services Director; Greg Stephens, City Attorney; Chris Tschirki, Public Works Director; Bill Bell, Development Services Director; Jason Bench, Planning Division Manager; Karl Hirst, Recreation Director; Scott Gurney, Interim Public Safety Director; Charlene Crozier, Library Director; Steven Downs, Assistant to the City Manager; Paul Goodrich, Transportation Engineer; and Taraleigh Gray, Deputy City Recorder |

**PRESENTATION – Open Meetings Training**

Mayor Brunst called the work session to order at 3:07 p.m.

Greg Stephens, City Attorney, said the City was required by State Law to provide an Open Meetings Training once every year.

He began his presentation by reviewing the policy behind the open and public meetings act:

- Cities exist “to aid in the conduct of the people’s business.”
- Cities must take their actions openly.
- Cities must conduct their deliberations openly.

Mr. Stephens reviewed pertinent State law regarding a “meeting” and what qualified as one.

Mayor Brunst asked what would happen when there was a chance gathering where four or more members of the Council were present and City business came up in the conversation.

Mr. Stephens replied that a “meeting” did not include chance gatherings or social gatherings. For instance, if four Council members happened to all be at Costco on a Saturday afternoon, and they engaged in conversation, that would not be considered a meeting. However, Mr. Stephens suggested it would be better to not discuss City business at that time.

Mr. Stephens said meetings were open to the public unless closed in accordance with the Act. Mr. Stephens then reviewed closed meeting requirements, what constituted a social gathering, and electronic messaging.

Mayor Brunst asked if Councilmembers could text people in the crowd.

Mr. Stephens replied by saying the Council members could run into risk if they did text members of the crowd during the meeting. If a Council member needed a drink of water, and was texting someone to get him or her water, Mr. Stephens said he did not think that was a problem. The Council should keep in mind that texts and emails being transmitted between council members were subject to the Government Records Access and Management Act, (GRAMA).

Mayor Brunst asked about personal email.

Mr. Stephens said if the Council was discussing City business over personal or City email, both email accounts could be discoverable through GRAMA.

Mr. Stephens reviewed electronic meetings, noticing requirement, emergency meetings. He then reviewed 2014 Senate Bill 169, which became effective on May 13, 2014, noting it required electronic presentations to be made available as part of the public record. He said the recorder's office was coordinating the collection and retention of the information shared at the Council meetings regarding any items on the agenda. Mr. Stephens concluded by explaining the necessity for roll call votes.

### DISCUSSION – Citizen Survey Presentation

Scott Riding, Y2 Analytics, began the presentation by notifying the Council of six key things to keep in mind with as he reviewed the draft results of the citizen survey:

1. The presented draft of the study underrepresented the college student population in Orem. Y2 Analytics had UVU permission, but a student sample was pending UVU Institutional Review Board approval.
2. Current Orem Internet capabilities and ISP ratings were comparable to statewide numbers.
3. UTOPIA and the associated Macquarie deal was divisive, with the opposition possessing more closely-held opinions, though overall favor/opposition was close.
4. Supporters of the deal tended to see Internet as a utility, have higher incomes, and were dissatisfied with current ISPs.
5. Opponents of the deal tended to see Internet as a luxury and were extremely satisfied with current Internet Service Providers (ISPs).
6. The most important criteria for any deal were openness and partner competence.

### *Survey Methodology – Minimizing Error*

Mr. Riding said Y2 Analytics believed the survey represented the population holding energy accounts with the City. He provided the following points Y2 Analytics followed to minimize error while the survey was conducted.

- Sampling frame consisted of a combined universe of every household in the Orem City utilities accounts and the City newsletter database.
- Duplicate email addresses were discarded. In total, Y2 Analytics emailed 13,251 invitations, of which 607 bounced due to either incorrect email addresses or high spam filter settings resulting in a deliverability rate of 95 percent.
- Of the 12,644 delivered invitations, at the time of the presentation 2,671 citizens had responded with 2,172 completed online surveys. That result yielded a response rate of just over 21 percent. Each email address could respond only once.
- 2,172 interviews among an estimated adult population of 61,612 resulted in a margin of error for the survey of plus or minus 2 percentage points. Responses were weighted to better approximate city demographic composition.
- Due to the demographic composition of the City utility database, Y2 Analytics was in the process of obtaining a supplemental sample of UVU students.

Mr. Riding presented a sample of the email invitations sent to the Citizens. The survey was introduced as an official City-sponsored survey with academic support. He said there was a mechanism available for those who wanted to unsubscribe to do so. Of the 12,644 emails sent out, only 101 of those emails unsubscribed from the list.

Mr. Riding reported that at the end of the survey, citizens were asked if they wanted to participate in the future, and a supermajority of survey participants (76 percent) said yes.

Dr. Quinn Monson, Y2 Analytics, said that rate of willingness to participate in the future was well above the average response of 50-60 percent willing to participate again.

Mr. Macdonald said the survey was only sent to people with email addresses, and therefore the people without email addresses might be less inclined to want UTOPIA. He asked if Dr. Monson had considered that in the analysis.

Mr. Monson acknowledged Mr. Macdonald's concern and said the coverage rate of Orem citizens who had internet access at home was approximately 90 percent at home. Y2 Analytics felt confident that it was not missing many people.

Mrs. Black said missing all the students could pull the results in the opposite direction.

Dr. Monson agreed with Mrs. Black and said it may be a wash after the two demographics were considered.

#### *Respondent Demographics – Representative of Utility Accounts*

Mr. Riding discussed demographics. He said the study underrepresented the youngest adult population in Orem. Y2 Analytics was hoping the student responses would supplement that.

Mayor Brunst said what Orem was looking for was the citizen's response to the proposed Macquarie / UTOPIA deal. He suspected it would really affect those that own real estate or businesses within the City. He said students did not typically own real estate and asked how that played into the study.

Mr. Monson said Y2 Analytics could do an analysis on whatever sub-group the Council was most interested in.

Mrs. Black noted there were thirty years for people to pay.

Mayor Brunst said students did not own real estate now, and the students could very well move out of Orem.

Mr. Riding said Y2 Analytics was charged with representing Orem as a whole. There was a clear hole that Y2 Analytics was pursuing, and that was the young population.

Bob Wright, resident, said he was a paying Orem utility customer, and he did not receive the email invitation to complete the survey.

Dr. Monson said it could be that Mr. Wright's email address was not in the City's database for utility customers, or that Mr. Wright's email provider filtered the invitation as some type of spam.

Mr. Macdonald said his survey invitation ended up in his email spam folder.

#### *City Direction & Priorities – More Unsure, UTOPIA Divisive*

Mr. Riding said that compared to a Dan Jones survey conducted in December, 2011, city residents were less sure of the current direction of Orem. The survey included a question where the respondents were given a list of eleven funding options within the city. Police, Fire, parks, and roads came in as the highest priorities. Internet network, on average, was prioritized at number seven. Mr. Riding mentioned that the size of the bubbles represented on the graph indicated the volatility of the priority. The bigger the bubble, the more divided respondents were on priority placement. Mr. Riding further explained the variability of budget priorities and said the average ranking did not tell the entire story—Internet network funding was actually the most divisive of the infrastructure priorities.

#### *Residential Internet Use and ISP Performance*

Mr. Riding said the study found that a supermajority of respondents (85 percent) considered Internet access to be essential to their home life. Most people knew who their network providers were. With regard to Orem residential ISP market share, the study found that Comcast and CenturyLink combined held well over 60 percent of the home ISP market. Mr. Riding said the residential ISP choice reasoning came down to price, speed, availability, and service. Mr. Riding said many respondents mentioned UTOPIA was not available in their area. Mr. Riding reported the study indicated that in Orem, the primary concern of Internet users was reliability. Among less-than-daily Internet users, the highest concern was affordability. Mr. Riding said the mode Internet speed in Orem households was 5-25 Mbps. The mode Internet speed among UTOPIA households in Orem was 51-99 Mbps. Mr. Riding said the net satisfaction with Orem residential ISPs was positive 42, while the statewide figure of net satisfaction was positive 49. The best satisfaction scores went to fiber customers, with the net satisfaction score of positive 75. Mr. Riding said a study conducted by the Utah League of Cities and Towns found that across Utah, the best satisfaction scores were correlated with faster Internet speeds.

### *Business Internet Use and ISP Performance*

Mr. Riding said the business numbers were closely related to the residential findings. With regard to business, the study reflected the following:

- 14 percent surveyed said they own business in Orem.
- 89 percent surveyed said Internet access was essential.
- 60 percent of the business ISP market was made up of Comcast and CenturyLink.
- Price, availability, and service were all cited as top reasons to choose specific ISPs.
- The primary concern of business Internet users was reliability.
- The mode business Internet speed in Orem was 5-25 Mbps.
- The mode business Internet speed among UTOPIA customers was 100-999 Mbps.
- Net satisfaction with Orem business ISPs was positive 39.
- The best satisfaction scores were given by fiber customers, with a net satisfaction rate of positive 71.

### *UTOPIA Context*

Mr. Riding reported the survey provided respondents with basic facts about UTOPIA to ensure the respondents had some information about the current status. The survey provided the following information:

“In 2002 Orem City joined with 10 other Utah Cities to install a high-speed fiber optic network called UTOPIA. Many private-sector service providers use the UTOPIA infrastructure to offer internet, voice, and other services to Orem residents. About 10 percent of city residents are UTOPIA customers, but only 34 percent of households and businesses in the city can connect to the network today.

“Orem City owes an inflation-adjusted \$2.9 million per year to pay off construction of the network plus an additional \$400,000 in yearly operating expenses.”

Citizens were provided with a text box to provide commentary on UTOPIA in Orem. The commentary provided was mostly nuanced and thoughtful.

Mayor Brunst asked if Mr. Riding would provide a list of comments.

Mr. Monson said Y2 Analytics would provide the submitted comments verbatim. There were an upwards of 10,000 comments provided by the respondents. The respondents were almost perfectly split between high speed internet being a luxury or utility: 49 percent said it was a luxury, and 51 percent said it was a basic need.

Mr. Riding said this was a cross cutting concern issue, so not a lot of consistency on the answers.

### *Macquarie Proposal*

Mr. Riding provided to the Council the information given to respondents regarding the current Macquarie proposal. Mr. Riding reported the survey represented that though neither side had a clear majority; opposition had a stronger depth of opinion with regard to citizens' favor or opposition for Orem to enter into the public private partnership. Reasons for favoring the

Macquarie deal included concerns about debt, competitiveness, and service. Reasons for opposing the Macquarie deal were respondents not wanting to pay for a service they did not want. Mr. Riding explained that the study reflected a majority of the residents (71 percent) believed the proposed utility fee was unfair. Most residents (68 percent) preferred an address-by-address approach, where the networks build out would happen by way of demand, not by force. Mr. Riding said there was a statistical tool that could be used to tease out some of the basic components of peoples' opinions, which is called statistical modeling.

Dr. Monson said Y2 Analytics would update models as it finished the data collection. He emphasized things in survey were more or less predictive of peoples' attitudes with the proposed deal. His intent was to find out what was most likely to explain peoples support or opposition to the proposed deal. Those that were extremely satisfied with the service they were currently using, the less likely they were to be in favor of the proposal. People were more likely to support the proposal when they saw high-speed Internet as a priority. Dr. Monson said the support for proposal was a lot more diffuse, and the reason given were a lot more varied, making the in-favor study result much more difficult to predict. Dr. Monson said opposition was much easier to predict with the questions Y2 Analytics used. Dr. Monson said what was absent from the model was a person's basic political ideology.

Mr. Riding said political ideology referred to the scale from conservative to liberal, and in the case of the study, political ideology was less of a concern than were the specifics of the deal. Mr. Riding added that occurrence was typically rare in political analysis.

Dr. Monson said the institutional review board and he believed they would have an expedited process to sending out the survey to students. Dr. Monson said the data so far reflected a vast majority of responses that came within the first few days. The Council could break down the results along any dimension in the survey that the Council wanted to.

Mayor Brunst acknowledged the survey was done on an email basis. He said Mr. Macdonald's question was important about the Orem citizens who may not use computers who were not part of the survey.

Dr. Monson said that group would be a relatively small proportion of residents in Orem.

Mr. Riding added that 3 percent of residents reported not having internet access at home.

Mr. Davidson said it was important to note that given the timeliness of the information, there was additional evaluation that would take place.

Mayor Brunst said the Council would like to have the information as soon as possible.

Dr. Monson said the survey would close at Midnight that night.

Mr. Spencer asked if the analysis came in on June 17, 2014.

Dr. Monson said yes, the draft analysis was pulled on the morning of June 17, 2014.

Mr. Davidson said the reliability of the results was plus or minus 2 percent.

Mr. Spencer asked how many students would be surveyed.

Mr. Riding said Y2 Analytics was hoping to match the proportion of students to the census data, which was roughly 23 percent.

Mayor Brunst asked if Mr. Riding could break out the renters from the homeowners within the student respondent information. He said he would like to see that as the Macquarie deal affected the long-term residents.

Mr. Davidson said the information being presented could be shared to the Council immediately. He added that the response rate was very encouraging.

Mr. Monson said the response rate spoke to the citizens who were very engaged in the topic.

Mr. Riding said people thought a lot about the comments they provided through the survey.

Mr. Macdonald said it was interesting to see the strongly-opposed and the strongly-in-favor individuals that the Council was hearing from.

Mayor Brunst asked if there was an anger scale included in the survey.

Mr. Riding said Mayor Brunst was referring to “sentiment” and that it could be done.

Bob Wright asked about a survey for university students. They were not property owners.

Mr. Monson said that was up to the Council to take into account.

Sam Lentz said he suspected student populations would be replaced with students also feeling the same way, wanting to have high-speed internet access.

Mr. Macdonald said the student responses would not skew the overall survey response as much as suspected.

#### CONTINUED DISCUSSION – UTOPIA Fiber Options

Mayor Brunst said Mr. Spencer had asked for time that the Council could discuss UTOPIA fiber options without a presentation or agenda. An hour was allotted to have this kind of open discussion. Mayor Brunst opened the discussion.

Mr. Macdonald asked if the discussion could be around any subject.

Mayor Brunst said he intended for the discussion to revolve around any subject regarding UTOPIA and the Macquarie proposal.

Mr. Sumner said residential would pay \$20, and apartments would pay \$10. He asked how that would work.

Mayor Brunst agreed, saying the apartment building would be assessed the fee per door. The fee would show on the utility bill similar to the fees for water.

Mrs. Black said a lot of renters paid utilities.

Mr. Davidson said he knew conversations were taking place with the owners of high-density apartments with the State Apartment Association and Macquarie relative to that issue.

Mr. Sumner said each door would have to pay the fee one way or another.

Mr. Seastrand said it was likely that a lot of those were already paying for services through the fees the apartment owners assessed. For those that were already being assessed a fee for internet use, they may have a reduction.

Mr. Davidson said that, for example, a conversation was had with another group that was interested in providing service. Often those organizations were provided services in a “bulk” format, and he would imagine that in some ways those fees would be assessed somewhere in the rent.

Mr. Spencer voiced concern about the need for users to purchase or secure their own wireless routers. He disagreed that citizens should have to buy a router on top of having to pay the utility fee.

Mr. Davidson said he suspected it would be no different than incumbent providers. Typically incumbents provided services and users had the option to either rent a router from the incumbent or to provide their own routers to use with the service the incumbent was providing.

Mr. Spencer said the proposal alluded to it being a free service for the \$20 utility fee.

Mr. Seastrand said it sounded like Macquarie would provide a \$50 credit for installation provided.

Mayor Brunst said he believed it would be the same case for those who wanted upgrade then people would have to pay for that.

Referring to the utility fee assessed to apartments, Mr. Sumner said it sounded like a bookkeeping job for the owner of the apartments.

Mr. Seastrand said that, as he weighed through the key issues that caused him trouble, it boiled down to the mandatory cost for every resident, and the thirty-year time frame. The option of going forward would provide greater analysis of information the Council did not have, and the information from Milestone Two could impact his two main concerns. He asked if the Council had anticipated going into Milestone Two with expectations to the basic proposal; he wondered if there was hope to see some opt-out options within the Milestone Two process.

Mayor Brunst said his perspective was that Macquarie was waiting for the cities to determine what the cities thought the transport fee should be. That transport fee would change with the take rates. Mayor Brunst said he had concerns about the proposed fee. Inflation would factor into the



utility fee every year. Macquarie had quoted a potential utility fee that had the inflation figured into the cost as \$27.80 per month, instead of the \$18-20 utility fee that would be indexed annually.

Mrs. Black said she thought the \$27.80 included inflation.

Mayor Brunst said it was quoted at \$27.80 which would be a set figure. Macquarie proposed both the static fee of \$27.80 and the \$18-20 fee which would go up with inflation compounded annually. Mayor Brunst asked what the Council was looking at in terms of those individuals who wanted to opt out. He said all the only information he could find was that 8 percent of the statewide general population was on food stamps.

Mr. Davidson said information by zip code was received before the meeting, but that information had not yet made its way to the Council.

Mr. Bybee said the percentage of Orem residents receiving public assistance was roughly 14 percent.

Mayor Brunst said there was also a risk of some cities not signing up with Macquarie, which could potentially make the proposed utility fee go up. He said that fee could increase as much as 20 percent. He suspected the reality on the utility fee would likely be closer to \$25 per month than the proposed \$20 per month. Mayor Brunst said he wanted a performance guarantee from the ISPs as to how they would perform.

Mr. Seastrand suggested that it was a combination of expectations on the part of the ISPs and Macquarie. It should be a complete and defined approach.

Mayor Brunst said he wanted to have outside legal counsel take a look at what Macquarie was proposing.

Mrs. Black asked when that would take place.

Mayor Brunst said it would likely be during Milestone Two.

Mr. Macdonald said if the cities could not get over a utility fee assessment the cities ought not to progress to Milestone Two.

Mayor Brunst said he had concerns over step-in rights.

Mr. Spencer asked what step-in rights were.

Mayor Brunst said his understanding was that if the City was not enforcing the utility fee, then Macquarie could step over the City and collect the fees from the customer directly. Mayor Brunst said freedom of choice was a strong issue for citizens. He believed it was a stumbling block within this proposal. His concern was that in every other city that took on a fiber project, the citizens had a choice. Mayor Brunst said Mr. Davidson and he had met with Vivint. Vivint wanted to meet with the entire Council to share its ideas. First Digital and CentraCom also expressed interest in meeting with the City Council.

Mrs. Black asked how that worked. She said she thought Orem was part of the eleven cities. She questioned how Orem got to keep looking at fiber network alternatives aside from the UTOPIA interlocal cooperative to which Orem was part.

Mayor Brunst said Mr. Davidson went to the UTOPIA board to ask for permission for Orem to look at other network alternatives. In the same realm, UTOPIA had given permission to First Digital to work with the Board as an alternative as well.

Mr. Davidson said this was a situation where Orem was part of an interlocal. Orem did not have ultimate control as to what the organization did.

Mr. Stephens said UTOPIA had its own purchasing and acquisition procedures, which were different than what Orem would do by itself.

Mayor Brunst asked if there was a law that stipulated that interlocal cooperatives had to follow what the city would do.

Mr. Davidson said there was recent legislation that dealt with special service districts. He wasn't sure if the bill passed, but he said the idea behind the bill was that special service districts had to follow the most stringent of policies as adopted by the participating cities.

Mayor Brunst said from that perspective UTOPIA should be looking at multiple bids. To that affect, Orem had been looking at alternatives.

Mrs. Black asked what the Council was trying to accomplish with the extra meetings regarding fiber network alternatives.

Mayor Brunst said the thought was to look at alternatives. He asked why Orem would take the first bid.

Mrs. Black asked how that would work with the interlocal cooperative that Orem as part of. She did not understand why Orem could move ahead and look at alternatives.

Mayor Brunst said UTOPIA agreed that Orem could move ahead and look at alternatives.

Mr. Seastrand asked about what options there were if Orem was not to move forward and others did.

Mayor Brunst said there was precedence in a few areas. UIA did not sign up every UTOPIA city. Those cities that had opted out of UIA had continued with service from UTOPIA, and nothing had changed that way.

Mr. Davidson said there were a few things to consider. Any Macquarie relationship that UTOPIA cities entered into would not be entered into as UTOPIA. It would be entered into a new entity. It was more like an "opt-in" arrangement than an "opt-out" arrangement. The conversation he had with Dave Shaw, legal Counsel for UTOPIA, indicated there would be a cost, but there was no definitive answer as to what the cost would be. There was reasonable assumption that UTOPIA was not going to do that for nothing. Mr. Davidson said UTOPIA

would continue to operate. The assets were under the ownership of UTOPIA and UIA. He said it was an interesting arrangement where the assets would be negotiated into use by a third entity, if the cities chose to move forward with the Macquarie entity. Mr. Davidson spoke to Mr. Seastrand point and said Macquarie developed the initial proposal on set of baseline assumptions. If those assumptions changed, then the fee would change. Mr. Davidson submitted to Council that the fundamental question was tied to the utility fee. Regardless of what the price was, if the Council was not supportive of moving forward with a fee, Mr. Davidson asked what the point of moving forward to Milestone Two was.

Mr. Macdonald said that if, hypothetically, on June 27, 2014, Orem decided not to be part of the party, but then on July 2, 2014, Orem decided it wanted to be part of the party, Macquarie would take Orem with its wallet and would allow it to join. He said he was not positive there was a “gun to his head” on the June 27, 2014, deadline. Mr. Macdonald said the survey came back how he thought it would. He acknowledged the divisiveness of the issue. He acknowledged the argument about fiber being compared to sewer lines fifty years ago. A decade ago UTOPIA was started. The current City Council could either fix it or kick it down the road. Mr. Macdonald said he did not want to kick the can down the road. Mr. Macdonald said the Macquarie deal was big. None of the Council had done billion dollar deals, and the current proposal was a huge deal. The Council really did not have many other options to consider. Mr. Macdonald said he was not sure about the swap Orem would have to pay, either.

Mrs. Black asked if the swap was in writing.

Mr. Macdonald said that it was in question.

Mr. Davidson said it was in question based on how Orem would go forward with the relationship. His understanding was that there would be negotiation.

Mr. Macdonald said there was other options. He said he would love the City Manager’s team to vet those other options. The need for fiber infrastructure was a huge deal that took time. Macquarie promised a great revenue stream, but the Council from ten years ago received similar promises. Mr. Macdonald said he would rather the Council not consider proposals presented by entities clearly not large enough to do what the City needed. What Macquarie had a reasonable business proposition, but it was an expensive long-term deal. He expressed concerned that passing onto Milestone Two would lead citizens to initiate a referendum which might then “unpass” the Council’s decision. Mr. Macdonald said he was concerned that the Council was being compelled to make a decision without all the facts it needs to make that decision. Mr. Macdonald said he did not know if the City would have a \$100 million business after the thirty years. He said there were citizens in Orem who chose not to by green bananas because it was a long term investment. Those citizens sure would not want to be buying into the 30 year agreement. Mr. Macdonald said he would like to find out if the City said no if Macquarie would let Orem back in the game.

Mr. Seastrand said the problem would lie with the changing of the dials—such as the re-consideration of the proposed utility fee, depending upon how many cities chose to participate.

Mrs. Black said she thought there was danger in saying no.

Mr. Davidson said the City found itself in the most enviable situation as it related to parity. For example, the flexibility that Orem had, as opposed to other cities, might be stronger.

Mayor Brunst said he was not aware of anyone else in the United States doing it as a group of cities. In each case, cities were doing on their own. In each case the citizens were able to vote on it.

Mr. Andersen asked if UTOPIA had ever put up a for sale sign.

Mayor Brunst said not that he was aware, but there had been offers.

Mr. Davidson said he did not think UTOPIA had ever gone to a formal RFP, though multiple conversations had taken place with interested parties.

Mr. Andersen wondered if UTOPIA could put a for sale sign up after the assessment of a utility fee.

Mr. Davidson said the fundamental difference was that UTOPIA made a decision back in 2002. The assets were not owned by individual cities but by UTOPIA. There was a requirement on the part of Orem to find a way to continue to work through UTOPIA to find a way to separate and extricate Orem from that group.

Mr. Andersen said Laura Lewis said cost per house was \$10.31. He asked what she meant by that figure.

Mayor Brunst said it was the current cost for Orem to pay the debt per year. Laura Lewis represented that debt cost on a “per-address” basis.

Mr. Andersen asked for clarification on the sharing of revenues as proposed by Macquarie.

Mr. Davidson said that would be a component of the Milestone Two evaluation. His understanding was that the cities would get well north 50 percent in upsell revenue sharing.

Mrs. Black said it would be a percentage of the transport fee, not the cost of what customers were paying.

Mr. Davidson said this would be based on customers and participants.

Mayor Brunst said there were three parties using the transport fee for money.

Mr. Davidson restated that the details of the transport fee had been represented as a Milestone Two analysis.

Mr. Andersen referred to a PowerPoint presentation and asked what percentage of the City was actually wired with UTOPIA.

Mr. Davidson said it was 34 percent.

Mr. Spencer said he was concerned that Macquarie would have first claim on all revenues. He was concerned that there were no other options. Mr. Spencer said he wished that UTOPIA would put it out for formal proposal, so it could compare apples to apples, so UTOPIA would have a benchmark.

Mr. Davidson said the body that made the decision was not Orem, but rather UTOPIA and UIA.

Mr. Spencer said he was concerned about the utility fee and wondered if it would be too much to ask of the citizens.

Mayor Brunst said 10 years ago the City Council decided to fund UTOPIA. He shared a personal story that demonstrated how much could change in ten years.

Mayor Brunst said 10 percent of UTOPIA was business related, that fiber was a competitive market with competition getting stiffer.

Mrs. Black said she was not ready to make any definitive comments about the Macquarie proposal. She said Orem was in an interlocal agreement. She expressed concern that Orem kept talking about other things it was looking at, but the City was part of a group, and that group needed to work together to solve the problem. Mrs. Black said she thought one of the real problems in Orem was the lack of ubiquity in the build out. She expressed concern about fairness issues. Ubiquity was important for her to look at and consider as it could give everyone the opportunity to enjoy the fiber network. Open access was another aspect that fostered competition. She said ubiquity and open-access were important points that needed to be considered with any proposal. Mrs. Black went on to say that parity was another issue. Orem had it good as far as how much was built out comparative to what Orem owed. Other cities were not in that same position.

Mayor Brunst said he would like to see UTOPIA available to all citizens, but not forced on all citizens.

Mr. Spencer said he appreciated Mrs. Black's comments. He said it was not a fair comparison, and UTOPIA should do a fair proposal.

Mr. Macdonald said he thought that if Orem stayed with the Macquarie proposal, the only time given to Orem to vet out any other potential proposal was June 27, 2014, so the only way to get additional time would be to not continue to Milestone Two.

Mr. Davidson said, if the Council's intent was to go to a formal bid process, he wondered what the purpose was of meeting with the other groups.

Mr. Spencer said the Council would see if the other groups were interested.

Mr. Davidson said he was confident the other groups would submit formal proposals should it go out in a formal process. If the decision of the Council was not to move to the next Milestone, then the opportunity to assess other interested parties would open up. The City would then move down a parallel track, with one side assessing proposals while the other side worked through the

legal ramifications of UTOPIA in trying to allow Orem to use alternative providers who would use UTOPIA assets to provide services to the City of Orem.

Mayor Brunst said when Macquarie came to UTOPIA it was important for UTOPIA to go and vet out other proposals and alternatives. He said he did not think it was right to go with only one proposal.

Mr. Spencer said the cities would not necessarily get a “do-over.”

Mrs. Black said if the City denied moving forward with Macquarie, she thought it would not yield a do-over.

Mr. Macdonald said he had a differing opinion, that Orem would have the opportunity to jump back on the boat if need be.

Mayor Brunst said the citizens were number one. It was their money, and their obligation. Mayor Brunst said he hoped to keep the citizens involved.

#### **5:00 P.M. STUDY SESSION- PUBLIC SAFETY TRAINING ROOM**

|                   |   |
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| CONDUCTING        | Mayor Richard F. Brunst, Jr.  |
| ELECTED OFFICIALS | Councilmembers Hans Andersen, Margaret Black, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner   |
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#### **Review Agenda Items**

The Council and staff reviewed the agenda items.

#### **City Council New Business**

There was no new City Council new business.

The Council adjourned at 5:55 p.m. to the City Council Chambers for the regular meeting.

#### **6:00 P.M. REGULAR SESSION**

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| CONDUCTING | Mayor Richard F. Brunst, Jr. |
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## ELECTED OFFICIALS

Councilmembers Hans Andersen, Margaret Black, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner

## APPOINTED STAFF

Jamie Davidson, City Manager; Brenn Bybee, Assistant City Manager; Richard Manning, Administrative Services Director, Greg Stephens, City Attorney; Steve Earl, Deputy City Attorney; Bill Bell, Development Services Director; Jason Bench, Planning Division Manager; Karl Hirst, Recreation Director; Scott Gurney, Interim Public Safety Director; Charlene Crozier, Library Director; Steven Downs, Assistant to the City Manager; and Taraleigh Gray, Deputy City Recorder

## INVOCATION / INSPIRATIONAL THOUGHT PLEDGE OF ALLEGIANCE

Glenn Parker  
Lovena Rowndy

## APPROVAL OF MINUTES

Mr. Sumner **moved** to approve the minutes from the following meetings:

- May 22, 2014, Special City Council Meeting
- May 23, 2014, Special City Council Meeting
- June 5, 2014, Special City Council Education Meeting

Mr. Seastrand **seconded** the motion. Those voting aye: Hans Andersen, Margaret Black, Richard F. Brunst, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner. The motion **passed**, unanimously.

## MAYOR'S REPORT/ITEMS REFERRED BY COUNCIL

### Upcoming Events

The Mayor referred the Council to the upcoming events listed in the agenda packet.

### Appointments to Boards and Commissions

No new appointments to Boards and Commissions were made.

### Recognition of New Neighborhoods in Action Officers

No new Neighborhood in Action officers were recognized.

### Motion – Mayor Pro Tem – July 1 through December 31, 2014

Mayor Brunst **moved** to appoint Hans Andersen as Mayor Pro Tem. Mr. Spencer **seconded** the motion. Those voting aye: Hans Andersen, Margaret Black, Richard F. Brunst, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner. The motion **passed** unanimously.

## CITY MANAGER APPOINTMENTS

There were no City Manager appointments.

## **PERSONAL APPEARANCES**

Time was allotted for the public to express their ideas, concerns, and comments on items not on the agenda. Those wishing to speak should have signed in prior to the meeting, and comments were limited to three minutes or less.

Sam Lentz said he had organized a group called “Fiber for Orem,” meant to counter the wave of opposition to the Macquarie proposal. The group was advocating four objectives in Orem:

1. Ubiquitous fiber optic network that offered access to every Orem address
2. Robust plan to solve the City’s debt crisis
3. Increased market competition for existing service providers
4. Equitable treatment for existing fiber customers.

Mr. Lentz expressed concern about the taxpayer’s association opposition to the Macquarie proposal. He presented the idea that the City could offset the utility fee by using part of the City’s revenue share in the upsell of services.

Glenn Parker voiced concern about UTOPIA. He shared an audit report regarding UTOPIA that said there was no planning on how to get from point A to point B. Mr. Parker said the Council should consider that and if the proposed plan would really work.

James Child said he was concerned the UTOPIA thing was a Ponzi scheme. He said he felt very uncomfortable about the deal.

Kate Barker spoke about comparing Orem to Lehi and Sandy City with regard to the UTOPIA participation. She voiced concern that the Orem City Manager brought over other management help from Lehi. She questioned the survey that was carried out and said it was misleading and misrepresentative.

Dan Barker expressed concern with the Macquarie UTOPIA deal. He was concerned about the City agreeing to more debt. Mr. Barker said there were other options for getting fiber to the citizens.

Margot Anderson voiced concern about loud noise in her neighborhood. She also expressed concern about water running all through the day to water lawns.

Afton Miller said she was trying to understand how so many people could see things so differently. She said the idea of going into more debt to solve existing debt was a strange concept. She did not think it was right that the poor and the needy should be paying for those services for other people. She voiced concern that if people did not pay the utility fee, then water services would be shut off. She said she did not think it was right for everyone to pay for a luxury only a few people would use.

Curtis Wood said that in the November the election he told the Council that the people did not want more taxes. He said the UTOPIA was another tax. He did not know why another tax idea was being brought forth to fix a really bad idea. He said the UTOPIA deal could not stand on its own. He asked the Council to stop considering new taxes.

Fred Slosch, a Heber City resident, said he received medical advice to not go with the seniors on the excursion down to the Tuachan Theater. He voiced frustration that he was not permitted to



find a replacement to take his place on the trip. He asked for time with the Council to discuss some concerns he had with the Senior Citizen center.

Bob Church, former City prosecutor, presented an award to Orem City Attorney, Greg Stephens. Mr. Church said Lynn Higgins, Nation Guard Representative, was present to explain the award.

Mr. Higgins said the Department of Defense took very seriously the task given to National Guard members. The Department of Defense recognized employers who went the extra mile to assist National Guard members to serve their country. Mr. Higgins read the nomination written by Mr. Church.

Bob Church presented the Patriot Award for outstanding support of soldiers, given by the Department of Defense to Mr. Stephens. Mr. Church said he had appreciated Mr. Stephens' support.

## **CONSENT ITEMS**

### RESOLUTION – Accept Annexation Petition for Further Consideration – Lakeside Addition – 1500 South Geneva Road

Jason Bench, Planning Division Manager, presented to Council a petition for annexation. On June 6, 2014, Ryan McDougal filed an application for the annexation of 227.59 acres into Orem.

Should the Council accept this petition, the 30-day certification time period would begin. Upon certification of the application, the City Council would begin a mandatory 30-day noticing and protest period.

The certification process involved the City Recorder, City Attorney, County Clerk and surveyor to determine if the petition met the requirement of Subsections 10-2-403(2), (3), and (4) UCA. The County Clerk had 30 days to respond.

Upon acceptance of the application, an additional 30-day noticing and protest period would begin. If a protest was received during the 30-day period, the City Council may deny the annexation petition or take no action until it had received the County Commission's notice of its decision on the protest.

If no protest was received, the public hearing would tentatively be scheduled for the September 9, 2014, City Council meeting. At that time, the City Council would decide whether or not to annex the property and what the zoning designation of the property would be.

Mr. Bench outlined some items to consider during the review period:

- Complete the impact fee study for water, sewer, and storm water
- Work with Utah County concerning annexation boundary
- Cost of initial infrastructure – Impact fees were designed to cover cost over time
- General Plan Map
- Zoning

Mayor Brunst asked Mr. Bench if the property had been attempted to be annexed previously.

Mr. Bench said it had not, so far as he was aware.

Mr. Seastrand **moved**, by resolution, to accept his petition for annexation of 227.59 acres at 1500 South Geneva Road. Mrs. Black **seconded** the motion. Those voting aye: Hans Andersen, Margaret Black, Richard F. Brunst, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner. The motion **passed**, unanimously.

## **SCHEDULED ITEMS**

### 6:20 P.M. PUBLIC HEARING

#### ORDINANCE – Amending portions of Section 22-11-36 and Appendix “R” of the Orem City Code pertaining to the PD-23 zone at 320 South State Street

Councilmember Macdonald and Mayor Brunst recused themselves from the discussion and vote and left the discussion at 6:42 p.m. Mr. Sumner, Mayor Pro Tem, conducted the discussion on the item.

Mr. Bench presented an applicant request to consider amending various portions of Section 22-11-36 and Appendix “R” of the Orem City Code pertaining to the PD-23 zone at 320 South State Street. The PD-23 zone (Midtown Village) was approved by the City several years ago. The Recession of 2007 occurred and effectively put a stop to the project. A development group had interest in purchasing the project from Big-D Construction if certain modifications were made to the ordinance which included changes to the concept plan. A summary of the substantial changes are as follows.

The first request was to change the name from Midtown Village to Midtown 360, which would provide for a change in branding and a perception of a renewed and different project.

Mrs. Black asked what the motivation was for the name change.

Mr. Bench said part of the development would allow a 360 degree view of the development. The applicant was requesting the address be changed from 320 South State Street to 360 South State Street.

Mr. Bench explained the second proposed change having to do with the main floor use. The applicant was requesting the following:

- Eliminate the requirement that the main floors of each building be devoted to retail uses.
- Allow 20% of the main floor area of the north and south towers to be used for noncommercial purposes and allow any commercial use (not just retail) on the remaining 80%.
- Eliminate any commercial use requirement on the main floor of the west buildings.
- Proposing to include a recreation area and other amenities for the tenants on the ground floor of the south building.

Mr. Bench explained the third proposed change for parking which would permit 1.65 stalls for each residential unit above the base density. The base density for the proposed project was

129 residential units. The request to allow 1.65 stalls per unit above the base density was a change from the 2.0 stalls currently required.

The proposed concept plan contained 1,123 parking stalls. The parking was jointly shared between 532 (403 units plus 129 base units) residential units and 96,800 square feet of nonresidential uses. Pep Boys, to the north, had signed a perpetual access and parking easement agreement with Midtown Village with regards to 40 stalls on the south side to the Pep Boys property which the 360 Place development may use if needed.

Using the standard requirement of 1 stall per 250 square feet of commercial space, 388 parking stalls were needed for the commercial/nonresidential uses plus the 129 base residential units. Using 1.65 stalls for each unit over the base density residential unit (403) an additional 665 parking stalls for the residential units were required. Nonresidential parking plus the required residential parking equals 1,053 stalls, not including the Pep Boys parking stalls. In addition, the applicant was providing an additional sixty parking stalls for the project for the possibility of sixty units housing up to three singles. However, since the development was mixed use, parking demand for residential was higher at night with the commercial demand greater during the day. The concept of shared parking works because the demand for commercial and residential uses occurs at different times. University Mall was recently approved with 1.49 stalls per residential unit because of the similar shared parking concept. Overall, the project meets the proposed parking requirements.

Mr. Sumner asked if there would be an area between Pep Boys and the Midtown 360 project.

Mr. Bench said there would be a connection point.

Mr. Seastrand asked what the original parking density was.

Mr. Bench said it was parked at 2.0 stalls per unit originally. The applicant was proposing to decrease the parking to 1.65 parking stalls per unit.

Mr. Seastrand asked how the parking compared to other projects.

Mr. Bench said the University Place parking was at 1.49 stalls per unit.

Mr. Bench outlined the fourth proposed change. The maximum building height of 65 percent of the building rooflines was proposed to increase from 60 feet to 70 feet with exception of elevator shafts, stairwells, or mechanical systems, which may have a maximum height of 111 feet. Mr. Bench explained the fifth proposed change regarding setbacks. The setbacks of the two buildings along Orem Boulevard were proposed to change from 80 feet to 20 feet as measured from the curb along Orem Boulevard. The walls on the west side of the two existing buildings would then be finished with windows and balconies and other improvements to complete the west facades of the existing north and south structures. The applicant was requesting that buildings greater than 80 feet (previously 60) be setback at least 80 feet (previously 160 feet) from a residential zone.

Mr. Andersen said he was not aware there were any homes in the area.

Mr. Bench said there were neighborhoods located directly behind the adjacent commercial property.

Mr. Bench covered the sixth proposed change. The applicant was requesting the Council to allow concrete masonry unit (CMU) block to be used as an exterior finish material, as well as metal to be used for up to 20 percent of the exterior finish materials.

In response to a query from Mrs. Black about the proposed use of metal as an exterior finish, Brett Harrison of Harrison Architecture said the group was looking to update the color palate of the entire project. The applicant was asking to use metal for up to 20 percent of the exterior finish.

Mr. Bench said the seventh proposed change had to do with signage. Signage, for the most part, would conform to Chapter 14 of the Orem City Code. However, one monument sign was being sought be located at one entrance on State Street and one entrance on Orem Boulevard. These signs would be up to eight feet high and 15 feet wide. One sign could also be located above the top residential level of the north and south building but shall not have an electronic message. It was anticipated this sign will be used to advertise the name of the development. A “crown” sign that would be located at the top of either the north or south tower that would identify the project. This sign would consist of lettering on a flat face and would be allowed to be up to 15 feet in height and 50 feet in width. One additional vertical wall sign for each building that would be used to identify the project or the address of the project. These signs could be 40 feet in height and four feet in width.

Mr. Bench explained the eighth proposed change, regarding sidewalks. The last several PD zones on State Street had been approved with a separated sidewalk measuring eight feet for the landscape strip and sidewalk. Staff had asked the applicant to do the same in the PD-23 zone. That also included the frontage on Orem Boulevard with exception to the sidewalk which may be six feet wide.

Mr. Bench said the ninth proposed change had to do with large residential units. The applicant was requesting that the Council allow up to 60 residential units, having at least 1,700 square feet to have up to five unrelated individuals living in the unit.

Mr. Bench shared the proposed elevations of the development.

Mrs. Black asked if the color would go away and how the applicant planned to make the project more inviting.

Mr. Harrison said the grade level would include planter strips. Awnings would be provided on the building that would give a better street appeal. The signage would pull in more color and would pop off the gray color scheme. The movement away from the colors and maintaining a neutral color palate was to keep up with what was currently trending.

Mrs. Black said there would be changes in extension.

Jayson Newitt, with the Ritchie Group, added to Mrs. Black’s comment by saying the units would be higher-end units. The project represented significant investment and risk on the part of

the developer. Because of that, the developer wanted to ensure that the product matched with the targeted market by trying to come up with a design that would attract a higher-end client.

Mr. Seastrand asked what type of clientele was being targeted.

Mr. Newitt said the units were designed to be market-rate apartments, with nicer finishes, stainless steel appliances, and granite or quartz countertops. Very few apartments have the kind of existing infrastructure that already existed with the Midtown development. Mr. Newitt said students were not being targeted, though some students would likely live there. Most of the tenants would be young professionals with young families. There could also be some element of older tenants such as the fifty-five and over age group.

Mr. Seastrand said he was concerned the parking needs would not be met with the proposed sixty larger units that would house up to five unrelated adults. He asked how many people the applicant thought would live at the development.

Mr. Newitt said there were 920 bedrooms.

Mr. Sumner asked if there was any policing in place for parking overflow in the neighborhoods.

Mr. Newitt said parking was an important element of the project, and the worst thing to do would be to under-park the project. The developer had hired Hales Engineering to ensure that the project was properly parked. A third-party operator would be on site to tend to the tenants' needs.

Mr. Seastrand asked if the telephone poles would stay where they were.

Mr. Newitt said that, after talking to Rocky Mountain Power, it was determined it would be cost prohibitive to bury those transmission lines.

Mr. Seastrand asked what the height would be on the proposed buildings along Orem Blvd.

Mr. Bench said the proposed 70 foot elevator would go to 111 feet. The existing tower height was 96 feet.

Mr. Seastrand asked what the difference was in units from the original to the current proposal.

Mr. Bench said the last approved proposal was 317 units, and the current proposal was 549 units.

Mr. Seastrand asked what the breakdown was in terms of the number of bedrooms per unit.

Ryan Ritchie, a colleague of Mr. Newitt, indicated the breakdown was 13.6 percent of the total units were 3-bedroom units, 42 percent was 2-bedroom units, and 44.4 percent was 1-bedroom units.

Mr. Sumner asked what the rent would be on a one-bedroom unit.

Mr. Ritchie said it would be between \$850 and \$950 per month. The square foot price would be between \$1.45 and \$1.50 per square foot.

Mrs. Black asked how much the rent would be for the three- and two-bedroom units.

Mr. Ritchie said the units in the south tower averaged in size approximately 1,650 square feet. The units on the second floor in the south tower would include about 37 “junior-ones” which would be about 650 square feet. On floors three through eight in the south tower, the units would average 1,450 square feet. The west tower would include one and two bedroom units, and the space per unit would average about 950 square feet.

Mr. Ritchie said the rental cost would range between \$900 per month and \$1,500 per month. There were some anomalies, including the existing limited supply of penthouse spaces, which would rent for approximately \$2,000 per month.

Mr. Andersen asked if a parking study had been completed.

Ryan Hales, Hales Engineering, explained the results of the traffic impact and parking studies conducted on the development.

Mr. Spencer asked if Paul Goodrich, Transportation Engineer, had had a chance to review the transportation study.

Mr. Goodrich said it was difficult getting developers to provide off-site improvements. In terms of traffic volume, the biggest capacity problems typically happened at intersections. The problem with widening the right turn pocket was that the inbound lane from State Street was too narrow for existing standards, and UDOT would likely require it to be brought up to standard. Mr. Goodrich estimated it would probably be \$100,000 or more to improve that. He said the City had a request for proposal going out for a transportation master plan to address the needs of Orem in a ten-year plan. The City hoped to identify a priority list of what streets were in the worst state of repair.

Mr. Spencer asked if there was money in the fund to address the needs on 400 South with regard to the Midtown project.

Mr. Davidson said the thing to consider was where exactly the improvement fit on the list of improvements needing to be made. The intersection was a concern regardless of the development project. The improvements could not be required of the developer.

Mrs. Black asked Mr. Goodrich if the addition of the development would put the street higher on the priority list.

Mr. Goodrich said they would like to have the study a little bit ahead to know where to move forward with the plan.

Mr. Seastrand asked if the parking study was adequate.

Mr. Goodrich said it was.

Mr. Spencer asked about completion timeline for the project.

Mr. Newitt said the goal was to start finishing units in south tower in the fall, and work on the north tower at the same time. The completion would happen in phases. The south tower would be first, then the north tower structure, followed by north tower units. The developer would then analyze market conditions for moving forward with the west tower. The goal was to go forward so the entire project could be done in two-and-a-half to three years.

Mr. Seastrand asked about the developer's intentions with the bond on the project.

Mr. Newitt said the intention was to pay that off in November 2014.

Mr. Sumner opened the public hearing.

Bob Wright, resident, said citizens would be very happy that the project was starting to move toward completion. He said he could understand the desire to change the name of the project, due to the negative publicity the project had had for years, as it sat unfinished. He said the bond should be paid off first, and he was glad to hear the development group intended to pay off the bond in full by November.

Mark Hornberger, resident, said he was speaking against what was being proposed. He said the only reason Midtown got approved was because it was supposed to be luxury living. The current proposal would not solve the problem of the great and spacious building. Increasing the density and lowering the parking did not suit the big picture. He voiced concern about the improvements needed along 400 South, and that the City Council was setting precedence for other developments along State Street.

Mr. Sumner closed the public hearing.

Mr. Bench said there was a master development agreement in progress, and that the applicant requested that this discussion be continued to July 8, 2014, City Council meeting.

Mrs. Black said she wanted to see that the bond pay off details were spelled out in the development agreement.

Mr. Seastrand said he was nervous about the height of the elevator shafts and the increased density. He asked if the applicant could address why the original concept plan did not work for the developer.

Mr. Newitt said the existing project was a challenging one. Many prospective developers had passed the opportunity to complete it due to the risk. There were a lot of unknowns in the project. The developer had hired consultants to determine what would work best with what was there. A feasibility study was completed to look at the right mix of units. Due to lack of market demand, building luxury condominiums as originally planned did not make sense. As for the elevator shaft height, per ADA requirement, access to the space on the roof should be available to all. The developer was trying to be respectful with heights but also provide the required access.

Mr. Sumner asked how much green space would be included in the project.

Mr. Newitt said landscape plans were currently being worked on, so he did not have any exact percentages to provide.

Mr. Spencer asked if Mr. Goodrich could estimate traffic flow on Orem Boulevard with additional development to the south.

Mr. Goodrich said there was more concern about the overall State Street corridor study. He could have more information available at the meeting on July 8, 2014.

Mrs. Black said her comment went back to depths and variation in the architecture. She voiced concern about the twenty-foot setback from the street. She did not want some gray wall going along the whole length of Orem Boulevard. Mrs. Black said she would appreciate having elevations at the next meeting to better provide an idea of the classiness the developer was proposing.

Mr. Spencer **moved** to continue the discussion to July 8, 2014. Mr. Andersen **seconded** the motion. Those voting aye: Hans Andersen, Margaret Black, Mark E. Seastrand, David Spencer, and Brent Sumner. The motion **passed**, 5-0.

Mr. Seastrand said he was not comfortable with the height increases and set back, as well as the increase in density. He said he was happy to see things happening but he was not ready to let the development group do whatever it wanted to do.

Mr. Sumner said he was still concerned about the traffic study.

Mr. Andersen said he was glad the applicant was intending to improve the eye sore of the county. He voiced approval that the applicant was going to turn something that had been bad into something that was good.

Mr. Newitt said he was sensitive to the City Council's comments. He reported that a neighborhood meeting had been held, and Mr. Hornberger had not attended. The density and traffic issues were discussed at the neighborhood meeting. Mr. Newitt informed the City Council that they were the fourth entity that had had this project under contract.

Mrs. Black asked for landscaping concepts to be shared at the following City Council meeting.

Mr. Seastrand said the two large black walls were what the public did not like to see.

Mayor Brunst and Councilmember Macdonald returned to the discussion at 8:04 p.m.

CONTINUED DISCUSSION – ORDINANCE - Amending the General Plan land use map by changing the land use from medium density residential to regional commercial and amending Section 22-5-3(A) and the zoning map of the Orem City Code by rezoning 0.35 acres from R6 to HS at 2008 South Sandhill Road.

Mr. Bench informed the Council that on May 27, 2014, they had continued the YESCO item to allow the applicant time to work with the neighborhood and consider proffering a development agreement that would outline specific restrictions to help mitigate neighborhood concerns. The item was continued again on June 10, 2014, to allow time to finalize the development agreement



and come back with one final recommendation. Additional information concerning the development agreement would be provided at the public hearing.

YESCO requested that the City Council rezone a small parcel of land it owns at 2008 South Sandhill Road and an adjoining parcel owned by the City from the R6 zone to the Highway Services (HS) zone. The two parcels included in the request comprise 0.35 acres (15,246 square feet.) The property bordering the subject property on the north was also zoned HS.

The application consisted of two parts. The first was to amend the General Plan land use map of the City from medium density residential to regional commercial. The second part was to amend the zone map of the City by changing the zone from R6 to Highway Services (HS).

YESCO was making the request because it desired to maintain an LED sign on its existing billboard at the present location. YESCO first erected a billboard on the property in approximately 1998. At that time the YESCO parcel consisted of 0.56 acres or 24,393 square feet. Up until 2005, the property was in unincorporated Utah County and was zoned Industrial-1.

In 2005, YESCO filed an application to have the property annexed into the City. At approximately the same time, the City was negotiating with YESCO to acquire a part of the property so that the City could construct a storm water detention basin and a roundabout at the intersection of 2000 South and Sandhill Road.

The City needed to acquire as much of the YESCO parcel as possible in order to construct the desired improvements; YESCO was willing to work with the City to accomplish this goal. YESCO's only interest at the time was to retain enough property to allow it to continue operating a billboard on the property. YESCO agreed that it would sell as much of its original parcel to the City as it could while still retaining enough property to meet a minimum lot size requirement. The City suggested applying the R6 zone to the property as that zone required only a 6,000 square foot lot size and was the only zone that allowed a lot of less than 7,000 square feet. The intent was to apply a zone that would allow the City to purchase the greatest amount possible of YESCO property. YESCO agreed to this proposal with the belief that the R6 zone would not in any way impede its ability to continue operating a billboard on the property.

In accordance with that understanding, the City Council annexed the YESCO property into the City on September 27, 2005 and applied the R6 zone to the property. The minutes of the City Council meeting of September 27, 2005 reflected the parties' intentions and state in part: "In order to maximize the area that the City can purchase and use for storm water detention, the City and YESCO desire that the parcel that YESCO will retain ownership of be as small as possible."

The City subsequently completed its purchase of all but 6,430 square feet of the YESCO property and proceeded to construct the detention basin and the roundabout. YESCO continued to maintain the billboard on the remaining parcel.

As part of UDOT's I-CORE I-15 project, UDOT constructed sound walls along the eastern edge of I-15 that obstructed the view of YESCO's billboard to traffic on I-15. In January, 2013, YESCO applied for and received a permit from UDOT to increase the height of the billboard in order to make it clearly visible over these sound walls. YESCO also requested and received a permit to install a new LED sign on the south face of the billboard. Subsequent to receiving the

permit, YESCO proceeded to increase the height of the billboard and installed the new LED sign.

In approximately March 2013, following installation of the LED sign on the south face of the billboard, the City received complaints from residential neighbors about the LED sign. While looking into the legality of the LED sign, the City discovered that on YESCO's permit application to UDOT, YESCO had inadvertently indicated that its property was in a commercial zone. When the City notified UDOT that the YESCO property was actually in the R6 zone, UDOT indicated that it would not have issued a permit for the installation of an LED sign on the billboard if it had known the property was in a residential zone. UDOT indicated that it would not allow this type of upgrade on a billboard unless the property was located in a commercial or industrial zone. However, UDOT indicated that the increase in the billboard height was still appropriate as a billboard company has the right to make its billboard clearly visible in the event that it becomes obstructed due to highway improvements.

Following the receipt of this information, City staff notified YESCO that it would either need to remove the LED sign or have its property rezoned to a commercial or industrial zone. City staff has also held ongoing discussions with YESCO representatives and neighbors in the area to see if some kind of compromise could be reached that would allow YESCO to keep the LED sign while mitigating the sign's impact on neighbors. Some of the options that have been discussed include (1) keeping the sign message static (no sign changes) during certain hours such as between midnight and 6:00 a.m.; (2) slowing the rate of ad changes so that the message changes appear less abrupt; and (3) prohibiting an LED sign on the north face of the billboard. Those discussions have continued up until shortly before the Planning Commission meeting although no final agreement had been reached. In the event that a compromise agreement was reached, City staff recommended that such agreement be memorialized in a development agreement prior to any City Council action.

If the City Council rezoned the property to HS, UDOT would most likely allow YESCO to maintain the LED sign. If the City Council denied the application and the property remained R6, UDOT will likely require YESCO to remove the LED sign. However, even if the property remains R6, YESCO will maintain the right to have a traditional billboard on the property at its current height.

YESCO held a neighborhood meeting on April 9 with five neighbors or property owners in attendance. The concerns of the neighbors included the height and the LED panel. Some neighbors felt the billboard was too high. Others felt the LED sign may be acceptable and less obtrusive if kept at the existing height.

The Planning Commission first heard the request on April 23, 2014, but continued the item to May 7, 2014. Planning Commission members wanted to make a night visit to the site to see what impact the LED sign had on neighbors. Mike Helm of YESCO met several members of the Planning Commission (staggered times) on May 2, 2014, to view the sign at night and to examine readings of a light meter while directed at the LED sign. They also went into the home of a nearby resident to see how the LED sign affected the enjoyment of her house.

### Advantages

- A rezone of the property to HS would allow YESCO to maintain the LED sign on the south face of the billboard and avoid the expense and investment loss that would arise from removing the LED sign. This would also allow YESCO to realize the expectations it had at the time of annexation that application of the R6 zone would not negatively affect its ability to operate a billboard on the property.
- LED was generally less bright than standard lighting on billboards which may result in less overall light pollution.
- Application of the HS zone to the property would not open the door to other commercial uses since existing easements on the property would prevent any use other than the billboard.
- YESCO had indicated that it was willing to commit not to install an LED sign on the north face of the billboard.

### Disadvantages

- Some neighbors found the existence of an LED sign on the south face of the billboard to be less desirable than a traditional billboard face.
- If the property was rezoned HS, an LED sign could also be installed on the north face of the billboard unless a development agreement prohibiting that was executed prior to City Council action.

Mr. Bench turned time to Mike Helm, YESCO Media, to address City Council concerns.

Mayor Brunst said discussion from previous Council meetings regarding the item revolved around the time of day that the south side of the LED sign would display a static image. Mayor Brunst said Mr. Helm was going to meet with the residents and come back with a plan on what would be acceptable.

Mr. Helm thanked the Council for continuing the discussion on the item. He gave a history of the item, dating back to September 2013. Since that time there had been eleven meetings, including neighborhood meetings, Planning Commission meetings, evening meetings to measure light readings, and City Council meetings. After the Council meeting on May 27, 2014, a meeting was held with citizens on June 2, 2014. Mr. Helm reported sending an email to each Council member to discuss the citizen response; however, Mr. Helm said he only heard back from Mr. Spencer.

Mayor Brunst, Mrs. Black, Mr. Sumner, and Mr. Macdonald indicated they never received an email from Mr. Helm.

Mr. Helm said Jared Johnson, with YESCO, was present at the meeting. He worked for the branch of YESCO that manufactured the LED signs and had extensive knowledge on lighting issues. Mr. Johnson had worked with numerous Utah municipalities on local ordinances to regulate LED-type signs. Mr. Helm said Justin Matkin, YESCO legal counsel, was also present at the meeting. Mr. Helm said he had informed the Council at the previous Council meeting that YESCO could do the 11:00 p.m. to 6:00 a.m. curfew. He reported that the council felt that dusk until dawn was more appropriate. Mr. Helm said he took that information back to YESCO, and YESCO was willing to take the time to 10:00 p.m. to 6:00 a.m., but anything beyond that time would hamper YESCO's ability to market the sign the way it needed to.

Jared Johnson said he was with YESCO Electronics. He reported working in the Utah billboard industry for over a decade and had worked on a number of billboard issues and local zoning ordinances. He reported working on at least five of the Utah County municipalities that had taken action on digital outdoor advertising, in addition to working with Salt Lake County municipalities on similar issues prior to that. Mr. Johnson said, when YESCO met with the neighbors affected by the South face of the sign, they had discussed several aspects of the sign's use, including how the sign was illuminated, what YESCO could/could not control, what was automatically controlled, and how the sign was monitored through the network operations center. That information seemed to be good information that led YESCO to the recommendation for approval given by the Planning Commission. Mr. Helm had relayed additional information in further meetings with neighbors. Mr. Johnson said he had attended the Council work session prior to the meeting. He respectfully asked the Council to acknowledge the effort that had been made on the part of YESCO to address the concerns of the neighbors residing south and east of the existing LED sign. Mr. Johnson reported YESCO had come to a point that a curfew on the use of the sign between 8:00 a.m. and 6:00 p.m. would be acceptable, along with all the other requirements for regulation, such as the continued static usage on the North sign, and automatic dimming capability that was already being used on the sign.

Mayor Brunst said he thought Mr. Johnson meant 8:00 p.m. and 6:00 a.m. Mayor Brunst clarified that what the Council had requested was from sunset to sunrise, but there was also an option discussed that was the 8:00 p.m. to 6:00 a.m. idea.

Mr. Johnson said he wanted to explain that having a great deal of experience with this type of product, YESCO knew that to limit the ability to use the advertising space to the hours suggested by the Council would make the space unmarketable. The Council's request put YESCO in a place to where it could accept advertising space that would shut off at the peak driving hours. The purpose of the sign was to be there for the traveling public on the highway. YESCO was willing to take the sign to a restriction where the sign would be turned off between 10:00 p.m. and 6:00 a.m., making it the most restricted digital billboard in the state of Utah.

Mayor Brunst said summertime sunset was different than winter time.

Mr. Johnson said summertime sunset was approximately 9:30 p.m. at the latest. Sunset in the winter was approximately 4:30 p.m. on the shortest day. He went on to say that the sign in question was one that was legally allowed to be illuminated. YESCO was willing to restrict the illumination to within just a few hours of what the Council had requested at the previous meeting.

Mr. Seastrand asked how many digital billboards were in a residential zone.

Mr. Johnson said he did not know the zoning of all YESCO's signs.

Mr. Seastrand said the residential zoning was the challenge the Council was dealing with. The flashing in a residential zone created a problem that was not an issue in commercial zones. His interpretation was that LED signs did not belong in residential zones, due to the flashing and changing of the light on those signs.

Mr. Johnson said there was no statute in State law that said an LED sign could not be in a residential zone.

Mr. Seastrand questioned, if that was the case, why YESCO would not be allowed to leave the sign as it was, and why YESCO was asking for a zone change.

Mr. Johnson said that, when he finished his comments, Mr. Matkin would share his findings with the Council on a review of that information. Mr. Johnson said there was no prohibition. YESCO felt the same way the Council did. There were a number of cities within Utah County that had regulated digital signs where the signs were closer to residential areas than the sign in question was, with the caveat that the sign be held static beginning at 10:00 p.m. or 11 p.m. YESCO had altered the sign in question from a previous back-to-back sign that had four 400-watt metal flood lights reflecting off that sign. YESCO altered the sign by angling it away from the residential uses to diminish the amount of light that would pass in the direction of residential use. The angle was important as the direction of the light that comes from an LED sign could be predicted. Changing the angle on the face was a method used to ensure the light was directed away from the neighborhood. Mr. Johnson said there was a lot of information provided to the neighbors in attendance at the neighborhood meeting. He said YESCO had tried to put information together for the Council and had tried to review the original agreement between YESCO and the City in order to provide the City with the property necessary for the construction of the retention bin and roundabout.

Mr. Matkin provided documents to the City Council. He said the story of the property went back to 2005, in connection with the annexation of the property into Orem City, pursuant to a property acquisition agreement. The property, when annexed, was zoned industrial. The only reason the property had been zoned residential was because YESCO had voluntarily agreed to sell portions of it to the City to construct the roundabout and sewer and storm drain easements. If YESCO had not cooperated with the City in the sale of the property, the property would still be zoned industrial, and this issue would not be present today. Mr. Matkin said the property was pigeon-holed into a small residential zone because that was what fit at the time. The fact that the property was zoned R6 was kind of an anomaly. The property had been there for nearly twenty years, so the idea that the property was somehow residential in character was legal fiction. YESCO was coming before the Council in order to right the inconsistency that had existed for years and turn it back to Highway Services. The property acquisition agreement received from the City had outlined the intent that Orem City would get the property it needed for the roundabout, and YESCO would be able to continue to exist and maintain, for current and future uses, the billboard. The property had always been a billboard site, and YESCO was asking that the City allow it to continue the property in question as such. Mr. Matkin said lighting had decreased since the improvements to the sign had been made. Mr. Matkin addressed the question about State statute. He said it was ambiguous in that there was no specific provision making a distinction between residential signs and industrial signs for purposes of LED lighting. YESCO's position was that, because the land was zoned industrial at the time the sign was initially constructed, it was a legal use. YESCO believed that the downzoning of the property since original construction was irrelevant for purposes of continuance and maintenance of the sign. YESCO was asking the City to honor the original intent, which was a win-win in 2005.

Mayor Brunst asked what the income difference was on the regular sign on the north side, and the LED sign on facing south.

Mr. Johnson said he did not know the answer to Mayor Brunst's question, and did not understand the relevance of Mayor Brunst's question.

Mr. Helm said the digital face had six faces available, rather than just the one spot available on the north side.

Mayor Brunst said he was just curious how much the ad space rented for on the LED sign compared to the static sign.

Mr. Johnson said the cost of construction and maintenance of the sign supporting an LED face was significantly higher.

Mayor Brunst said he was talking profit and was trying to see how much actual profit the extra hours could generate for YESCO.

Mr. Johnson said the significance of the hours was that the market had a standard way of purchasing advertising space for billboards. The market recognized a twenty-four-hour site, or a business-hour site. It was not unusual when buying advertising space to allow the client to determine what site would best suit their advertisement. By not being able to extend the advertising space to the end of the business day, which for the service industry was 12:00 p.m. to midnight, it became a nonmarketable space.

Mayor Brunst said if the LED sign was not there, YESCO could still advertise on the regular space, though the profit from that space was less.

Mr. Macdonald said YESCO had represented that they were, in good faith, trying to come back. Originally, YESCO had wanted the LED sign operating 24-7. The Council members had indicated they wanted it daylight to daylight, and to that YESCO came back with 11:00 p.m. to 6:00 a.m. Mr. Macdonald said he did not think going to 10:00 p.m. was in the spirit of what the Council had suggested.

Mr. Macdonald then **moved** to deny the request to amend the General Plan land use map by changing the land use from medium density residential to regional commercial and amend Article 22-5-3(A) and the zoning map of the City by changing the zone on 0.35 acres at 2008 South Sandhill Road from R6 to HS. Mrs. Black **seconded** the motion. Those voting aye: Margaret Black, Richard F. Brunst, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner. Those voting nay: Mr. Andersen. The motion **passed**, 6-1.

## **COMMUNICATION ITEMS**

There were no communication items.

## **CITY MANAGER INFORMATION ITEMS**

Mr. Davidson made the Council aware of the Colonial Heritage Festival which would be held July 3-5, 2014 at SCERA Park.

## **ADJOURN TO A CLOSED-DOOR MEETING – City Manager Evaluation**

Mrs. Black **moved** to adjourn to a closed door meeting to discuss the character, professional competence, or physical or mental health of an individual pursuant to Utah Code Section 52-4-205(1)(a)). The meeting would be held in room #107, and the Council would adjourn when it was over. Mr. Seastrand **seconded** the motion. Those voting aye: Councilmembers Hans Andersen, Margaret Black, Richard F. Brunst, Jr, Tom Macdonald, Mark E. Seastrand, David Spencer, and Brent Sumner. The motion **passed** unanimously.

The meeting adjourned at 8:32 p.m.

## **CLOSED-DOOR SESSION**

A closed-door session was held at 8:41 p.m. to discuss the character, professional competence, or physical or mental health of an individual pursuant to Section 52-4-205(1)(a) of the Utah State Code Annotated. Those in attendance were: Mayor Richard F. Brunst, Councilmembers Hans Andersen, Margaret Black, Tom Macdonald, Mark Seastrand, David Spencer, and Brent Sumner.

The meeting adjourned at 9:26 p.m.

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Donna R. Weaver, City Recorder

Approved: July 22, 2014